

DRAFT – URGENCY BAN ORDINANCE – Item 3.10(m)

ORDINANCE NO.

**AN URGENCY ORDINANCE OF THE CITY OF SAN JOSE
AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL
CODE TO AMEND SECTION 20.10.040 OF CHAPTER
20.10 TO CLARIFY THAT UNLAWFUL USES ARE NOT
ALLOWED UNDER THE TITLE AND TO AMEND
CHAPTER 20.80 TO ADD A NEW PART 9.5 TO
EXPRESSLY BAN USES THAT INVOLVE THE
CULTIVATION, DISPENSATION OR DISTRIBUTION OF A
CANNIBUS PLANT FOR ANY PURPOSE AND SETTING
FORTH THE FACTS CONSTITUTING SUCH URGENCY**

WHEREAS, on June 15, 2010, the Director of Planning, Building and Code Enforcement determined, pursuant to the provisions of Title 21 of the San José Municipal Code and the provisions of the California Environmental Quality Act of 1970, together with regulatory guidelines promulgated thereunder (collectively, “CEQA”), that the approval and adoption of this Ordinance is not subject to and is exempt from CEQA pursuant to the provisions of CEQA guideline Section 15061(b)(3); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has considered and hereby approves of this exemption determination for the approval and adoption of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 20.10.040 of Chapter 20.10 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.10.040 Interpretation

A. In interpreting and applying the provisions of this Title, they shall be held to be for the purpose of promoting the public safety, health, convenience, comfort, prosperity, or general welfare of the community. It is not intended by this Title to interfere with or abrogate or annul any easements, covenants, or other agreements between parties; provided, however, that where this Title imposes a greater restriction upon the use of buildings or premises or upon height or buildings, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations or by easements, covenants, or agreements, the provisions of this Title shall govern.

B. No provision of this Title is intended to nor shall be interpreted or applied to allow a use or structure that violates federal, state or local law.

SECTION 2. Chapter 20.80 of Title 20 of the San José Municipal Code is hereby amended by adding a new Part 9.5 to be numbered and entitled and to read as follows:

Part 9.5 BAN ON CANNIBUS USES

20.80.750 Prohibited Uses

No person shall cultivate, dispense or distribute, nor allow or suffer the cultivation, dispensation or distribution of, any variety of cannabis plant for any reason or purpose whatsoever on any real property located in the City, either as a stand-alone activity or in combination with any other use of property. The provisions of this section are declarative of existing law.

SECTION 3. This Ordinance is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The fact constituting such urgency is that there is an urgent need to clarify that establishments involving the cultivation, dispensation, or distribution of any variety of cannabis plant for any purpose whatsoever are not allowed and may not operate in the City in order to facilitate the ability of the City to address currently, illegally-operating facilities that are dispensing varieties of the cannabis plant for allegedly medical purposes without any authority or approval from the City.

SECTION 4. This Ordinance shall become effective immediately upon its adoption pursuant to Section 605 of the Charter of the City of San Jose and shall remain in effect until the effective date of a superseding ordinance.

ADOPTED this day of , 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk